

ORIGINAL



0000080468

MEMORANDUM

30

TO: Docket Control

FROM: Ernest G. Johnson  
Director  
Utilities Division

EA for EGJ

DATE: January 11, 2008

RE: IN THE MATTER OF THE APPLICATION OF BROADWEAVE NETWORKS  
OF ARIZONA, LLC FOR APPROVAL OF A CERTIFICATE OF  
CONVENIENCE AND NECESSITY TO PROVIDE INTRASTATE  
TELECOMMUNICATION SERVICES (DOCKET NO. T-20514A-07-0113)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Resold Local Exchange Services
- Resold Long Distance Services
- Facilities-Based Local Exchange Services

Staff is recommending approval of the application.

EGJ: JFB:kdh

Originator: John F. Bostwick

Arizona Corporation Commission  
**DOCKETED**

JAN 11 2008

DOCKETED BY	
-------------	--

RECEIVED  
JAN 11 2 18 PM

RECEIVED

SERVICE LIST FOR: Broadweave Networks of Arizona, LLC  
DOCKET NO.: T-20514A-07-0113

Mr. Jonathan Marashlian  
8180 Greensboro Drive, Suite 700  
McLean, Virginia 22102

Mr. Christopher C. Kempley  
Chief Legal Counsel, Legal Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Mr. Ernest G. Johnson  
Director, Utilities Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

Ms. Lyn Farmer  
Chief Administrative Law Judge, Hearing Division  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, Arizona 85007

STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION

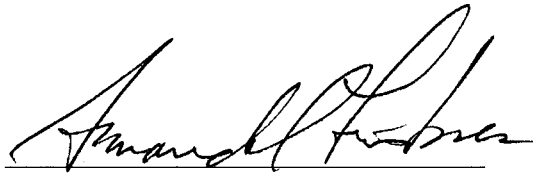
BROADWEAVE NETWORKS OF ARIZONA, LLC  
DOCKET NO. T-20514A-07-0113

IN THE MATTER OF THE APPLICATION OF BROADWEAVE NETWORKS OF  
ARIZONA, LLC FOR APPROVAL OF A CERTIFICATE OF CONVENIENCE AND  
NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATION SERVICES

January 11, 2008

## STAFF ACKNOWLEDGMENT

The Staff Report for the Application of Broadweave Networks of Arizona, LLC for approval of a Certificate of Convenience and Necessity to provide Intrastate Telecommunications Services (Docket No. T-20514A-07-0113), was the responsibility of the Staff members listed below. Armando Fimbres was responsible for the review, analysis, and the recommendations concerning the Applicant's Preferred Provider Agreements ("PPA"). John Bostwick was responsible for the review and analysis of the Application for a Certificate of Convenience and Necessity to provide intrastate telecommunications services and petition for a determination that its proposed services should be classified as competitive.



Armando Fimbres  
Public Utility Analyst V



John Bostwick  
Administrative Service Officer II

## TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION .....	1
2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES.....	1
3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES .....	2
4. ESTABLISHING RATES AND CHARGES .....	3
5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES .....	4
5.1 NUMBER PORTABILITY .....	4
5.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE .....	4
5.3 QUALITY OF SERVICE .....	4
5.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS .....	5
5.5 911 SERVICE .....	5
5.6 CUSTOM LOCAL AREA SIGNALING SERVICES .....	5
6. REVIEW OF COMPLAINT AND COMPLIANCE INFORMATION .....	5
7. COMPETITIVE SERVICES ANALYSIS .....	6
7.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES .....	6
7.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES .....	8
8. RECOMMENDATIONS .....	9
8.1 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE .....	12

## **1. INTRODUCTION**

On February 21, 2007, Broadweave Networks of Arizona, LLC ("Broadweave" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide resold and facilities-based local exchange and resold long distance telecommunications services in Arizona. The Applicant petitioned the Arizona Corporation Commission ("Commission") for a determination that its proposed services should be classified as competitive. On March 23, 2007, Staff deemed Broadweave's Application to be insufficient. At that time, Staff also sent its first set of data requests to Broadweave.

According to its Application, Broadweave will rely on the financial resources of its parent company, Broadweave Networks, Inc. A Certificate of Good Standing from the State of Arizona was attached to its Application. The certificate indicates that Broadweave is in good standing with the Arizona Corporation Commission and is qualified to do business as a domestic limited liability corporation organized under the laws of the state of Arizona.

On April 16, 2007, Broadweave sent its responses to Staff's first set of data requests. At the same time, Broadweave filed a confidential supplement to its Application for a CC&N. The supplement contains financial statements for the year ending December 31, 2006 and is submitted in a sealed envelope marked, "CONFIDENTIAL AND PROPRIETARY INFORMATION – Submitted Under Seal."

On June 6, 2007, Broadweave filed its revised responses to Staff's first set of data requests. Broadweave's responses of June 6, 2007 replaced entirely its responses of April 16, 2007. In addition, Broadweave stated in this filing that it waives its request for confidential treatment of specific financial information so that Staff will be able to report total assets, net income/loss, and stockholder's equity figures.

The Applicant stated in its Application that it will provide an Affidavit of Publication as soon as possible after the Hearing Division of the Arizona Corporation Commission advises it of the hearing date and publication of legal notice.

Staff's review of this Application addresses the overall fitness of the Applicant to obtain a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive and if the Applicant's initial rates are just and reasonable.

## **2. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

Staff determined that Broadweave is one of six (6) affiliated companies (who are also subsidiaries of Broadweave Networks, Inc., Broadweave's parent company) currently certificated and/or applying for certification to provide telecommunications services to customers in six (6) states, including Arizona. The affiliated companies of Broadweave Networks, Inc. are Broadweave Networks of Arizona, LLC, Broadweave Networks of California, LLC, Broadweave Networks of Nevada, LLC, Broadweave Networks of New Mexico, LLC Broadweave Networks

of Texas, LLC, and Broadweave Networks of Utah, LLC. In its Application, Broadweave has stated that it has not been denied certification in any state.

Broadweave provided biographical backgrounds on key members of its board, management and technical personnel. Staff has determined that Broadweave has eight key personnel with a combined total of 112 years of experience in the telecommunications service industry. Based on this information, Staff has determined that the Applicant has sufficient technical capabilities to provide the requested telecommunications services in Arizona.

### **3. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES**

A copy of Broadweave Networks, Inc.'s audited financial statements for the twelve months ending December 31, 2006, was sent to Staff in a sealed envelope marked, "CONFIDENTIAL AND PROPRIETARY INFORMATION – Submitted Under Seal." Staff was granted permission to review and report specific figures from the financial statements. The financial statements list Broadweave Networks, Inc.'s assets in excess of \$3.6 million; equity in excess of \$3.5 million; and a net income loss of \$632,018. The Applicant did not provide notes related to these financial statements.

The Applicant stated in its proposed long distance tariff (reference Arizona Tariff No. 2, in Section 2.1.4, on page 11) that it does not collect advances and/or deposits from its customers. Staff reviewed the Applicant's Arizona Tariff No. 2 tariff and verified that prepayments are not listed in the proposed tariff. Staff believes that the Applicant's customers should be protected by the procurement of a performance bond or an irrevocable sight draft Letter of Credit. Since the Applicant is requesting a CC&N for resold and facilities-based local exchange and resold long distance telecommunications services, a performance bond or an irrevocable sight draft Letter of Credit is appropriate. The amount of performance bond or irrevocable sight draft Letter of Credit coverage needed for each service is as follows: facilities-based interexchange \$100,000 and resold local exchange \$25,000. The performance bond or irrevocable sight draft Letter of Credit coverage needs to increase in increments equal to 50 percent of the total minimum performance bond amount or irrevocable sight draft Letter of Credit amount when the total amount of the advances, deposits, and prepayments is within 10 percent of the total minimum performance bond amount or irrevocable sight draft Letter of Credit amount.

To that end, Staff recommends that the Applicant procure a performance bond or an irrevocable sight draft Letter of Credit, at the discretion of the Applicant, in the amount of \$125,000. The minimum performance bond amount or irrevocable sight draft Letter of Credit amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond amount or irrevocable sight draft Letter of Credit amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the minimum of the performance bond amount or irrevocable sight draft Letter of Credit amount.

The original performance bond or irrevocable sight draft Letter of Credit must be filed with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a decision in this matter. The original performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

If at some time in the future, the Applicant wants to collect an advance, deposit, and/or prepayment from its resold long distance customers, it must file information with the Commission for Staff's review. Upon receipt of such a filing, Staff will review the information and forward its recommendation to the Commission. Also, if the Applicant desires to discontinue any type of resold and/or facilities-based telecommunications services, it must file an application with the Commission pursuant to the Arizona Administrative Code ("A.A.C.") R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit.

#### **4. ESTABLISHING RATES AND CHARGES**

The Applicant would be providing service in areas where an incumbent local exchange carrier ("ILEC") and interexchange carriers, along with various competitive local exchange ("CLECs") and interexchange carriers ("IXCs") are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Initially, Broadweave will have a zero-value rate base and its projected fair value rate base will be \$1,085,000 at the end of the first twelve months of operation.

The Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis.

Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other CLECs, ILECs and IXC's offering service in Arizona. Broadweave reported its tariff actual minimum and actual maximum rates for services were calculated using general market analysis based on experience for each of the company's services. Staff reviewed the Applicant's proposed Arizona Tariff No. 1 filed with the Application and Arizona Tariff No. 2 filed on June 6, 2007 as Attachment 5. Staff believes Broadweave's rates are comparable to the rates charged by competitive local exchange carriers, local incumbent carriers and major long distance carriers operating in Arizona. Staff also believes that the rates charged for telecommunications services by Broadweave in Arizona are comparable to the rates charged for similar services by Broadweave's affiliates in other jurisdictions.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Applicant's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

## **5. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES**

Issues related to the provision of local exchange services are discussed below.

### **5.1 NUMBER PORTABILITY**

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308 (A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

### **5.2 PROVISION OF BASIC TELEPHONE SERVICE AND UNIVERSAL SERVICE**

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204 (A) indicates that all telecommunications services providers that interconnect into the public switched network shall provide funding for the Arizona Universal Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

### **5.3 QUALITY OF SERVICE**

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). The penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar

history of service quality problems. Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

#### *5.4 ACCESS TO ALTERNATIVE LOCAL EXCHANGE SERVICE PROVIDERS*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

#### *5.5 911 SERVICE*

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications service market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and the Federal Communications Commission 47 CFR Sections 64.3001 and 64.002, it will provide all customers with 911 and E911 service, where available, or will coordinate with the ILECs and emergency service providers to provide 911 and E911 service.

#### *5.6 CUSTOM LOCAL AREA SIGNALING SERVICES*

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

### **6. REVIEW OF COMPLAINT AND COMPLIANCE INFORMATION**

The Applicant certified that it has neither had an application for service denied, nor revoked in any state. The Applicant also certified that there has been no formal or informal complaint proceeding in the other jurisdictions in which the Applicant provides service.

Finally, the Applicant certified that there have not been any civil or criminal proceedings against the Applicant.

Staff contacted five (5) state Public Utilities Commissions ("PUCs") and determined that Broadweave's five (5) affiliated companies are certificated, registered, or listed to provide telecommunications services in the states listed in the Application. Staff also confirmed that there were no consumer complaints against the Broadweave's affiliated companies. Based on this information, Staff has determined that the Applicant has adequate capabilities to provide the telecommunications services it is requesting authority to provide.

The Applicant certified that none of its officers, directors or partners has been involved in any civil or criminal investigations, formal or informal complaints. The Applicant also indicated that none of its officers, directors or partners has been convicted of any criminal acts in the past ten (10) years.

## **7. COMPETITIVE SERVICES ANALYSIS**

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive. The Applicant indicated that it does not have a resale or interconnection agreement in operation at this time. Staff's analysis and recommendations are discussed below.

### **7.1 COMPETITIVE SERVICES ANALYSIS FOR LOCAL EXCHANGE SERVICES**

#### **7.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The local exchange market that the Applicant seeks to enter is one in which a number of new CLECs have been authorized to provide local exchange service. Nevertheless, ILECs hold a virtual monopoly in the local exchange service market. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, the Applicant will have to compete with those companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments.

The Applicant and/or its affiliates have entered into Preferred Provider Agreements ("PPAs") in at least one state<sup>1</sup> for the purpose of providing voice, data and video services in Master Planned Communities ("MPCs") and may be planning to enter into similar service arrangements in other states<sup>2</sup>, including Arizona. By means of PPAs, the Applicant would join marketing and operational efforts with MPC developers. Generally in a PPA, the developer agrees to exclusively promote and market the services of one telecommunications provider. In some cases, PPAs have included or led to participation

---

<sup>1</sup> Telephonyonline.com, "Greenfield Players Pursue Fiber Land Grab" by Ed Gubbins, December 11, 2006; Broadweave Networks news release, <http://www.broadweave.com/pressReleases.htm>, <http://news.thomasnet.com/companystory/493826>, September 8, 2006

<sup>2</sup> For example, Texas, California, Nevada & New Mexico

in Home Owner Association ("HOAs") agreements that bundle telecommunication services with other services provided by the HOA. PPAs have been used by the dominant ILEC in Arizona, Qwest Corporation, and by the dominant CLEC in Arizona, Cox Arizona Telcom.

In response to Staff's data request STF 3.2, the Applicant acknowledged its full awareness of the PPA dockets and key issues pending before the Commission:

1. In the matter of the formal complaint of Accipiter Communications, Inc. against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C., and Cox Arizona Telcom, L.L.C., T-03471A-05-0064.
2. Investigation into Preferred Carrier Arrangements and Other Potential Anti-Competitive Practices Involving Service to Residential or Business Developments, T-00000K-04-0927.

7.1.2 The number of alternative providers of the service.

Qwest and various independent LECs are the primary providers of local exchange service in the State. Several CLECs and local exchange resellers are also providing local exchange service.

7.1.3 The estimated market share held by each alternative provider of the service.

Since Qwest and the independent LECs are the primary providers of local exchange service in the State, they have a large share of the market. Most CLECs and local exchange resellers have a limited market share. Cox Telcom is the only CLEC believed to have captured a significant market share in the Phoenix and Tucson Metro areas.

7.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.

None.

7.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the CLECs and local exchange resellers also offer substantially similar services.

7.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories and the CLEC's have also entered the market.
- b. One in which new entrants will be dependent upon ILECs:
  1. To terminate traffic to customers.
  2. To provide essential local exchange service elements until the entrant's own network has been built.
  3. To interconnect.
- c. One in which ILECs have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market since new entrants do not have a long history with any customers.
- d. One in which Qwest provides a quality of service that has in the past generated a significant number of complaints. The complaints led the Commission to adopt service rules that contain penalties if the service quality standards are not met. A provider of alternative service, such as the Applicant, should provide Qwest – as well as other providers – with the incentive to produce high quality service including service installation and repair on a timely basis.
- e. One in which most customers have a few, if any choices since there is generally only one or two providers of local exchange service in each service territory.
- f. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

## **7.2 COMPETITIVE SERVICES ANALYSIS FOR INTEREXCHANGE SERVICES**

### **7.2.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.**

The interexchange market that the Applicant seeks to enter is one in which numerous facilities-based and resold interexchange carriers have been authorized to provide service throughout the State. The Applicant will be a new entrant in this market and, as such, will have to compete with those companies in order to obtain customers.

### **7.2.2 The number of alternative providers of the service.**

There are a large number of facilities-based and resold interexchange carriers providing both interLATA and intraLATA interexchange service throughout the State. In addition, various ILECs provide intraLATA interexchange service in many areas of the State.

**7.2.3 The estimated market share held by each alternative provider of the service.**

The large facilities-based interexchange carriers (AT&T, Sprint, MCI WorldCom, etc.) hold a majority of the interLATA interexchange market, and the ILECs provide a large portion of the intraLATA interexchange market. Numerous other interexchange carriers have a smaller part of the market and one in which new entrants do not have a long history with any customers.

**7.2.4 The names and addresses of any alternative providers of the service that are also affiliates of the telecommunications Applicant, as defined in A.A.C. R14-2-801.**

None.

**7.2.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.**

Both facilities-based and resold interexchange carriers have the ability to offer the same services that the Applicant has requested in their respective service territories. Similarly many of the ILECs offer similar intraLATA toll services.

**7.2.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).**

The interexchange service market is:

- a. One with numerous competitors and limited barriers to entry.
- b. One in which established interexchange carriers have had an existing relationship with their customers that the new entrants will have to overcome if they want to compete in the market.
- c. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

**8. RECOMMENDATIONS**

Staff recommends Broadweave's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant complies with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;

2. That the Applicant abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to, customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from the Applicant indicating that its fair value rate base is \$1,085,000. The Applicant's fair value rate base is too small to be useful in a fair value analysis. In addition, the rate to be ultimately charged by the company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Applicant, the fair value rate base information provided should not be given substantial weight in this analysis. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local exchange carriers, local incumbent carriers and major long distance carriers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions.
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge.
8. That the Applicant offer Last Call Return services that will not return calls to the telephone numbers that have the privacy indicator activated.
9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process, without further order of the Commission and no time extensions shall be granted.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariff shall conform with the application and Commission Decision and state that the Applicant does not collect advances, deposits, and/or prepayments from its customers.

2. The Applicant shall:

- a. Procure a performance bond or an irrevocable sight draft Letter of Credit, at the discretion of the Applicant, in the amount of \$125,000. The minimum performance bond amount or irrevocable sight draft Letter of Credit amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The performance bond amount or irrevocable sight draft Letter of Credit amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$12,500 of the minimum of the performance bond amount or irrevocable sight draft Letter of Credit amount.
- b. File the original performance bond or irrevocable sight draft Letter of Credit must be filed with the Commission's Business Office and copies of the performance bond or irrevocable sight draft Letter of Credit with Docket Control, as a compliance item in this docket, within 30 days of the effective date of a decision in this matter. The original performance bond or irrevocable sight draft Letter of Credit must remain in effect until further order of the Commission. The Commission may draw on the performance bond or irrevocable sight draft Letter of Credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is default of its obligations arising from its Certificate. The Commission may use the performance bond or irrevocable sight draft Letter of Credit funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.
- c. If at some time in the future, the Applicant wants to collect an advance, deposit, and/or prepayment from its resold long distance customers, it must file information with the Commission for Staff's review. Upon receipt of such a filing, Staff will review the information and forward its recommendation to the Commission. Also, if the Applicant desires to discontinue any type of resold and/or facilities-based telecommunications services, it must file an application with the Commission pursuant to the A.A.C. R14-2-1107. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or irrevocable sight draft Letter of Credit.
- d. Because the Applicant has executed a PPA in at least one other state and those arrangements are now under investigation in Arizona, Staff further recommends that the CC&N be granted on the condition that the Applicant agrees to accept and be subject to all conditions and rules ultimately adopted by the Commission

pertaining to PPAs<sup>3</sup>, in dockets currently pending before the Commission.

- e. Staff further recommends that before entering into PPAs in Arizona, the Applicant must first submit a copy of each PPA to the Commission Staff for review. Pending the completion of the Commission dockets pertaining to PPAs, any proposed PPAs must:
1. Allow equal access to public easements by competitive telecommunications providers.
  2. Not impose access fees unless reviewed and approved by the Commission.
  3. Not participate in arrangements which would restrict access to a MPC by other telecommunication providers.
  4. Only provide telecommunications services to end-users at terms and conditions available in Applicant's tariffs filed with and approved by the Commission.
  5. Not limit end-user choice.
  6. Not lead to or not include participation in HOA, or other, agreements which require end-users to pay for telecommunications services they do not select or do not want.
  7. Not enter into any PPA or other agreements such as utilized in the Vistancia MPC and currently under review by the Commission<sup>4</sup>.

*8.1 RECOMMENDATION ON THE APPLICANT'S PETITION TO HAVE ITS PROPOSED SERVICES CLASSIFIED AS COMPETITIVE*

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange service markets.

Therefore, the Applicant currently has no market power in the local exchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.

---

<sup>3</sup> In the matter of the formal complaint of Accipiter Communications, Inc. against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C., and Cox Arizona Telcom, L.L.C., T-03471A-05-0064; Investigation into Preferred Carrier Arrangements and Other Potential Anti-Competitive Practices Involving Service to Residential or Business Developments, T-00000K-04-0927

<sup>4</sup> In the matter of the formal complaint of Accipiter Communications, Inc. against Vistancia Communications, L.L.C., Shea Sunbelt Pleasant Point, L.L.C., and Cox Arizona Telcom, L.L.C., T-03471A-05-0064;